

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAN CHAPDELAINE,

Plaintiff,

v.

INSTITUTIONAL SERGEANT OF R&R,
et al.,

Defendants.

No. 1:23-cv-01396 GSA (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

ORDER DIRECTING CLERK OF COURT
TO:

(1) RANDOMLY ASSIGN DISTRICT JUDGE
TO THIS MATTER, AND

(2) MAIL AND SERVE COPY OF THIS
ORDER

ORDER RECOMMENDING THAT THIS
MATTER BE SUMMARILY DISMISSED

Plaintiff, formerly a state prisoner proceeding pro se, brought this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. The record indicates that after this action was *brought*, but **before**: 1) an application to proceed in forma pauperis status was filed, or the filing fee being paid, and; 2) before the matter was screened, Plaintiff passed away. See ECF No. 5 (order to show cause regarding failure to pay filing fee or file in forma pauperis application); ECF No. 8 at 4 (coroner's report).

For the reasons stated below the undersigned will recommend that this matter be

1 summarily dismissed for lack of jurisdiction. In addition, the Clerk of Court will be directed to
2 mail a copy of this order to Plaintiff's possible successor-in-interest and/or representative as
3 identified herein, and to also serve a copy of this order on the appropriate individual at the Office
4 of the Attorney General in Sacramento, California.

5 I. RELEVANT FACTS

6 In a December 28, 2023 filing, and in compliance with the Court's order, the California
7 Department of Corrections and Rehabilitation confirmed that Plaintiff has passed away. See ECF
8 Nos. 7, 8 (court order and response to same, respectively). Attached to the filing was a coroner's
9 report from the Monterey County Sheriff's Office which verified that Plaintiff is deceased. ECF
10 No. 8 at 4.

11 II. DISCUSSION

12 Normally, when a party to a case dies during an action, Federal Rule of Civil Procedure
13 25(a) governs the substitution of parties. It states in relevant part:

14
15 (1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim is
16 not extinguished, the court may order substitution of the proper party. A motion
17 for substitution may be made by any party or by the decedent's successor or
18 representative. If the motion is not made within 90 days after service of a statement
19 noting the death, the action by or against the decedent must be dismissed.

20 Fed. R. Civ. P. 25(a)(1). However, in this case and prior to Plaintiff's death, Plaintiff had neither
21 paid the filing fee in full nor filed an application to proceed in forma pauperis, as is statutorily
22 required, and thus this case was not formally *filed* (as opposed to simply being *brought*, see
23 below). See 28 U.S.C. §§ 1914, 1915 (filing fee requirements). In addition, because this matter
24 had not yet been *screened* by the Court, there had been no determination made at the time of
25 Plaintiff's death whether any viable claims were properly raised against Defendant Warden
26 McVay, and/or against any of the three yet-to-be identified Doe Defendants. See generally ECF
27 No. 1 at 1-3 (complaint naming four Defendants); see also O'Neal v. Price, 531 F.3d 1146, 1151
28 (9th Cir. 2008) (stating complaint filed only after court identifies cognizable claims); Ford v.
Johnson, 362 F.3d 395, 398 (7th Cir. 2004) (stating matter not filed until fee paid or in forma

1 pauperis status granted and matter passes statutory screening). In sum, because of the above
 2 status of this case at the time of Plaintiff's death, there was no statutorily recognized *filed*
 3 complaint, and as such the court herein lacks jurisdiction to proceed further with the case--and
 4 which also results in Fed. R. Civ. P. 25 being inapplicable.

5 "A court must have the power to decide the claim before it (subject matter jurisdiction)
 6 and power over the parties before it (personal jurisdiction) before it can resolve a case."
 7 Lightfoot v. Cendant Mortgage Corp., 580 U.S. 82, 95 (2017) (citation omitted); Becker v. Ute
 8 Indian Tribe of the Uintah and Ouray Reservation, 868 F.3d 1199, 1207 (10th Cir. 2017) (Hartz,
 9 J. concurring) (quoting Lightfoot); Greenfiled MHP Associates, L.P. v. Ametek, Inc., No. 3:15-
 10 cv-01525 GPC AGS, 2018 WL 538961, at *3 (S.D. Cal. Jan. 24, 2018) (citing Lightfoot). "[O]ne
 11 becomes a party officially, and is required to take action in that capacity, only upon service of a
 12 summons or other authority-asserting measure stating the time within which the party served must
 13 appear and defend." Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350
 14 (1999) (brackets added); see also Life Technologies Corp. v. Govindaraj, 931 F.3d 259, 264 (4th
 15 Cir. 2019) (citing Murphy Bros., Inc.); Beckett v. Scalia, No. 1:20-cv-01468 CDB (PC), 2023
 16 WL 6393083, at *1 (E.D. Cal. Oct. 2, 2023) (citing same); Doe v. Mast, No. 3:22-cv-00049, 2023
 17 WL 4492466, at *3 (W.D. Va. July 12, 2023) (citing same).

18 Again, given these facts and the applicable law, when considering the possible
 19 substitution of parties under Rule 25(a), because the instant complaint had yet to be screened
 20 there are no existing claims, nor are there any defendant parties upon whom a motion for
 21 substitution could be served. Thus, besides finding Rule 25 to be inapplicable the Court will
 22 recommend that this matter be summarily dismissed for lack of jurisdiction. In addition, the
 23 Clerk of Court will be directed to: (1) send a copy of this order to Plaintiff's possible successor-
 24 in-interest and/or representative who is identified in ECF No. 6 (SEALED EVENT) at the address
 25 provided at ECF No. 6 at 2, and (2) serve a copy of this order on the Office of the Attorney
 26 General in Sacramento, California.

27 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall:

- 28 1. Randomly assign a District Judge to this action;

2. Mail a copy of the order to Plaintiff possible successor-in-interest and/or representative identified in ECF No. 6 at 2 (SEALED EVENT), and

3. Serve a copy of this order on R. Lawrence Bragg, Supervising Deputy Attorney General at the Office of the Attorney General in Sacramento, California.

IT IS FURTHER RECOMMENDED that this matter be SUMMARILY DISMISSED for lack of jurisdiction.¹

IT IS SO ORDERED.

Dated: **March 6, 2024**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

¹ Because there are no parties who are able to lawfully object to this order, no period to do so is allotted.